IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRIMINAL APPEAL NO.670 SB OF 2003

DATE OF DECISION: OCTOBER 16,2007

Ram Kumar

.....Appellant

VERSUS

The State of Punjab

....Respondent

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

PRESENT: Mr. J. S. Bedi, Advocate,
for the appellant.

Mr. Shailesh Gupta, DAG, Punjab,
for the State.

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RANJIT SINGH, J

Raghbir Singh, working as S.D.O. in Punjab State Electricity Board, Thermal Plant, Bathinda, alongwith Ram Kumar, J.E., in the same department were prosecuted for an offence under Section 7 read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the Act”). The trial Court, however, acquitted Raghbir Singh but found Ram Kumar guilty of an offence under Section 7 read with Section 13(2) of the Act. He was sentenced to suffer RI for one year and to pay a fine of Rs.1,000/-. He was also directed to undergo RI for one month in default of payment of fine. He is, thus, in appeal before this Court to impugn the order of his conviction and sentence as

awarded.

The facts, in brief, are that appellant Ram Kumar was working as Junior Engineer, at the office of P.S.E.B., at Maur, whereas Raghbir Singh was working as S.D.O. at Thermal Plant, Bhatinda. Allegation is that Ram Kumar accepted a sum of Rs.3,000/- as illegal gratification other than legal remuneration from Balaur Singh, PW, as a motive or reward for issuing tubewell connection. S.D.O. Raghbir Singh is alleged to have conspired with appellant Ram Kumar in this regard and allegedly helped him in causing dis-appearance of the evidence.

Balaur Singh (PW4) and his family owned 20 killas of land, which they were jointly cultivating. He had applied for an electric connection for tubewell in the year 1992 in the office of S.D.O., Maur. Demand notice was issued to him and he was directed to file test report. PW4 submitted the test report in the office of S.D.O., P.S.E.B., Maur. Appellant Ram Kumar, being J.E., was Incharge of the area. He visited the village and while returning had told PW4 that the test reports are not passed without consideration and accordingly told him to visit his office. It is further alleged that about 15 days prior to the raid, an employee of Punjab State Electricity Board at Maur visited the house of PW4 and told him to submit a fresh test report. PW4 also alleges that he had personally gone to the office of SDO on 17.3.1993 and had submitted the test report alongwith the letter, when SDO was not present in his office. At that time, appellant Ram Kumar met him and took him to his office. There the appellant is alleged to have raised a demand of Rs.5,000/- as a bribe for releasing the electric connection. The complainant, however, left the

place without making any commitment. Appellant Ram Kumar visited the village again on 25.3.1993 and enquired from the complainant if he needed electric motor connection or not. The complainant, at that stage, stated that the demand of Rs.5,000/- was excessive and so a sum of Rs.3,000/- was agreed as bribe. The complainant claims that he had falsely promised so the appellant had statedly left satisfied. Complainant Balaur Singh shared this demand with his co-village Tehla Singh, who advised him not to pay any bribe and to report the matter to Vigilance Bureau. They both accordingly went to the office of Vigilance Bureau, Bathinda and narrated the entire episode to Inspector Tek Singh. The statement made by Balaur Singh (Ex.PD) was recorded and thumb marked by him. Balaur Singh also presented currency notes amounting to Rs.3,000/-. 3 notes out of these were of Rs.500/- denomination whereas remaining 15 notes were of Rs.100/- denomination. As per the usual practice, the serial numbers of the notes were noted down and the currency notes were treated with phenolphthalein powder. Thereafter, these were handed back to Balaur Singh with a direction to pay the same to the appellant on demand. The demonstration of the hand wash was also shown to Pws. Tehla Singh was associated with the raiding party as a shadow witness. He was instructed to transmit the pre-arranged signal immediately, when the amount was accepted by the appellant.

The police party and the witnesses then left for conducting a raid. Udey Ram, Junior Assistant, Office of Deputy Commissioner, Bathinda, was associated as an official witness. Balaur Singh and Tehla Singh were asked to contact appellant whereas other members of the party stayed back being stationed at

scattered places. After about five minutes, a signal was received from Tehla Singh and Inspector Tek Singh alongwith other members of the raiding party went and nabbed appellant Ram Kumar. Inspector Harbans Singh, who was accompanying the raiding party, was asked to make efforts to associate a Gazetted Officer. Raghbir Singh, though present in the office, did not associate himself with the recovery. The Executive Engineer, however, was not available in his office at that time. A jug of water and a glass was arranged. A solution of water with sodium carbonate was prepared. Hands of PW Udey Ram were dipped in the said solution but the colour did not change. Thereafter, when the hands of appellant Ram Kumar were dipped in the said solution, the colour turned light pink. This solution was put into the nip and sealed. Necessary formalities of signatures and taking in possession this solution were also completed. Search of appellant Ram Kumar led to recovery of currency notes to the tune of Rs.3,000/- from the back pocket of the trouser worn by him. The serial numbers of the notes so recovered tallied with the serial number of the notes in the entrustment memo Ex.PE. The currency notes were also taken in possession vide memo Ex.PJ. Personal search of the appellant led to recovery of a purse containing Rs.227/-, an identity card, driving licence and a ball pen, which were also taken in possession. The appellant was asked to remove his trouser after giving a new one to wear. The pocket of the trouser worn by the appellant was put into the water containing sodium carbonate and colour of the solution turned light pink. This was also sealed as was done earlier. Trouser was also converted into a parcel and sealed. The file relating to electric connection was also

taken into possession. Statements of various witnesses were recorded thereafter. Some other relevant documents were also taken into possession. On completion of investigation, challan was presented. After recording evidence, upon the plea of not guilty, trial followed, leading to his conviction and award of sentence.

The appellant, when confronted with incriminating circumstances and the evidence appearing against him, denied the allegation made against him, pleaded innocence and false implication. As per the appellant, he was falsely implicated by Balaur Singh, who was annoyed with him on the ground that material for release of connection to his co-villager, Nachattar Singh, was un-loaded at latter's house, due to which Balaur Singh felt offended. Because of this, he alongwith his relation Tehla Singh connived with the Vigilance Inspector Tek Singh, who planted this false case. The appellant further pleaded in his defence as under:-

> “I am innocent. I have been wrongly and false implicated in the instant case because Balaur Singh was annoyed with me as the material for giving connection to Nachattar Singh of Vill.Burj Hari Ke was unloaded at the house of said Nachattar Singh. According to the seniority list the connections are given to the consumers and seniority number of Balour Singh was 49 and before his connection, connections to various consumers including Nachattar Singh of his village were to be issued but he felt offended on that account. He alongwith his relation Tehal Singh connived with Vigilance Inspector Tek Singh who asked them to make the raid successful.”

To properly appreciate the case of prosecution and the evidence projected by the appellant, it would be appropriate to notice the plea raised by co-accused, Raghbir Singh, in his defence before the trial Court. His plea to urge his false implication reads as under:-

> "I have been falsely implicated in this case. My grand father's brother Mohan Singh Sukheeja contested Municipal Elections at Faridkot as Akali Candidate and he won the elections. Jagroop Singh brother of Tek Singh Inspector, Vigilance contested the said election as congress Candidate in which he lost. The Vigilance Staff was pressurising upon me to become a false witness to which I refused. Due to this reason and also due to previous grudge, I have been falsely involved in this case."

In support of his case, the prosecution would mainly rely upon the version of Balaur Singh (PW4), shadow witness Tehla Singh (PW5) and Udey Ram (PW6), joined as an independent witness. The prosecution would also rely upon the statement of Inspector Tek Singh (PW13), who had headed the raiding party and had conducted the investigation in this case. Various documents were also exhibited before the Court by the prosecution in support of its case.

Mr.J.S.Bedi, learned counsel appearing for the appellant, has raised a limited plea in support of the appeal. Learned counsel would say that this is a case where the plea raised by the appellant in his defence is probable and possible and that would go to cast doubt on the story of prosecution, as projected. This would result in

creating a reasonable doubt in the story of the prosecution, benefit of which must accrue to the appellant to take him out of his liability of the offence alleged. In a way, the learned counsel seems to contend that prosecution case, even if is seeking support from the evidence, still can be doubted when the defence has been able to probablise its plea, which, in turn, would go to caste doubt on the prosecution story, leading to a benefit of reasonable doubt in favour of the appellant.

There is no need to reiterate the concept of a law that in order to succeed, the prosecution has to prove its case beyond shadow of any doubt and if there be any doubt, the benefit of that is to accrue to the defence not as a matter of any grace but as a matter of right. There is also no need to emphasise that it is not each and every doubt, benefit of which can, thus, result in favour of the defence. Such a doubt has to be a "**reasonable doubt"**. As is generally remarked, reasonable doubt does not mean some light, airy, insubstantial doubt that may flit through of minds of any of us about almost anything at some time or other. It also does not mean a doubt be gotten by sympathy or out of reluctance to convict. It means a real doubt, a doubt founded upon reasons. Keeping this aspect of law in view, the plea raised by the learned counsel for the appellant needs to be appreciated.

The case set up by the appellant in his defence has been reproduced in extenso above. The plea of the appellant is that he was present in the store of P.S.E.B. in connection with the official work on the day of incident, when Balaur Singh (PW4) and Tehla Singh (PW5) met him there. As per the appellant, they both had talked with him about release of connection. The appellant apprised

Balaur Singh that his seniority was after Nachattar Singh and he would be given connection according to his seniority. Further plea is that when he had covered a distance of about 41 Karams from the store, he was surrounded by Vigilance Party and at that time, Balaur Singh (PW4) caught him from behind and put the tainted money in the back pocket of his trouser. The appellant claims to have raised alarm about his implication in this manner, when many of the P.S.E.B. Employees gathered there. They had protested against the false implication of the appellant. The appellant also claims that the Vigilance officials were asked to get the hands of appellant washed but they refused. It is also disclosed that the police was called from the Police Station, Maur, and demonstrating employees were controlled, whereafter, the petitioner was taken to Police Station, Maur and documents prepared there, including the hand wash etc. Learned counsel for the appellant has taken me through the evidence and relevant material on record to show that this plea of the appellant would find support from the evidence and the material, which is brought on record by the prosecution. From this, the learned counsel would contend that the defence has probalised its plea and, thus, casting a doubt on the prosecution story. According to the counsel, the burden on the defence is not that onerous and it can succeed by showing preponderance of probabilities in its favour whereas the prosecution can succeed only by proving the case beyond shadow of any reasonable doubt.

Reference is first made to the evidence of PW4. The appellant would point out that the turn of PW4 Balaur Singh was after Nachattar Singh of his village and the material for releasing his

connection was also kept at the house of Nachattar Singh. It is also on record that PW4 was released connection but some days after the release of connection to Nachattar Singh. It is also pointed out that Tehla Singh is closely related to PW4 Balaur Singh. It has come on record through version of PW4 that the office of Junior Engineer is at a distance of 1-1/2 Killa from the by-pass. Evidence of PW4 would also show that the appellant was intercepted at a distance of about 20-25 karams from his office. The theory of putting money by PW-4 in the back pocket of appellant, however, is only the version of the appellant. PW4 denied the suggestion that he had held the appellant in his grip from behind though agreed to the suggestion that lot of persons had collected from the quarters. PW4 further denied the suggestion that documentation was prepared in the Police Station. The fact that some police constable had come there, however, again is conceded by the witness. He again would deny the suggestion of the defence that any protest was raised by the employees. The counsel would point out that PW5, however, has given slightly different version when he said that the police party remained behind them at a distance of about 5 Karams, when they had gone the office of the appellant. PW-5 accepted that the appellant was intercepted outside the office. Admitted case also is that the money was recovered from the back pocket of the trouser of the appellant. PW5 accepted being related to the complainant Balaur Singh (PW4), being his uncle. PW4 was stated to be residing in Rajasthan from 6 to 7 years. It also came on record that his brother used to go to the office of P.S.E.B, Maur, to make enquiries regarding the connection. Learned counsel has highlighted the portion of the evidence of PW5

wherein he conceded that Vigilance Inspector had told them that raid should be successful, otherwise they would have to bear the expenses of the raid. This aspect is co-related by the counsel to the defence plea raised by co-accused of the appellant, Raghbir Singh. The stand of Raghbir Singh, as reproduced above, would show that Mohan Singh Sukheeja, brother of grand father of co-accused, Raghbir Singh, contested Municipal Election at Faridkot as a Akali Candidate and was successful. He had defeated Jagroop Singh, brother of Inspector Tek Singh, Incharge, who got this raid conducted. Vigilance Staff was pressurising Raghbir Singh to become a false witness, to which he refused and hence, he was statedly involved in this case falsely. From this, Mr.Bedi would urge that Inspector somehow wanted to fix Raghbir Singh in a false case and on account of this, the appellant became a tool in the design of the Vigilance Inspector, which is responsible for this false implication of the appellant. As per the counsel, the desperation on the part of Inspector Tek Singh would clearly be seen from the above version given by PW5. The counsel would, thus, contend that the witnesses also were forced to make this raid a success and that is why they went to the extent of putting this bribe amount into the back pocket of the trouser of the appellant.

The learned counsel would also refer to the portion of the evidence of PW5 where he states that the office of the appellant was about 200 yards from the place where the police party was standing. As per evidence of this witness, there is a boundary wall around the office and the Vigilance Party remained outside the wall. Evidence of PW5 shows the office of the appellant adjoins the office of S.D.O.

and Xen. One Lineman and one peon were also found sitting. According to PW5, he and PW4 had met the appellant inside the office and had then come out after being with him. The appellant had followed them when PW5 had given signal to the police. PW4 at that time was walking behind the appellant. PW5, however, clearly stated that Balaur Singh (PW4) did not hold the appellant in his grip but Vigilance Party had done so. This witness, however, admitted that employees, numbering 40, had gathered there. He also admits that these persons had told the Vigilance Staff to give demonstrate to them and not to falsely implicate the appellant and that the appellant was taken to Police Station, Maur. He, however, states that the proceedings were completed there only after disbursing the employees and they had gone to the Police Station at Maur where the writing work was done. From the evidence afore-mentioned, the submission made is that the plea of false implication of the appellant would emerge on account of preponderance of probabilities to caste doubt on the prosecution story. In addition to this, learned counsel for the appellant made detailed reference to site plan to indicate that this incident was at the store and not in the office. He would say that the store was at point `D' shown in the site plan whereas office of SDO is located at a far away distance on a road shown from Mansa to Bhatinda. The counsel basically would contend that it was not possible from such a long distance to give indication to the police, as is being made out.

Detailed reference to the versions of various witnesses is made above. There is some material here and there in the testimonies of these witnesses to show the presence of PW-4 or PW-

5 behind the appellant or the manner in which he was intercepted etc. That in my view would not be sufficient to either probablise his plea or to caste doubt in the prosecution version, which appears to standing firm in its core. The evidence of Udey Ram (PW6), who was an independent witness, in this regard can not be ignored. He can not be attributed with any motive or reason to say something, which is not witnessed by him. He is one, who had stayed with the raiding party, when Balaur Singh and Tehla Singh had gone to hand over the bribe amount. He confirms the fact that Tehla Singh gave a signal, when the raid was conducted in the office of P.S.E.B. This witness has also deposed about interception of the appellant. PW6 has given evidence about his hand being dipped in the solution when it did not change its colour and the fact that colour did change when the hands of the appellant were dipped into the solution. He has testified about the personal search of the appellant, leading to recovery of tainted money from the back pocket of his trouser. Thus, PW-6 has lent whole hearted support to the entire prosecution version. This witness further testified while under cross-examination that PW4 and PW5 were following the appellant closely but had not held him in their grip. Viewing the evidence of PW6, who is an independent witness, it can not be said that the version, as projected by the appellant, would sound probable or possible. As already noticed, a doubt, benefit of which can be given to the defence, does not mean any light or airy doubt, which may pass through the mind of any person. Neither a mere possibility nor a remote probability nor a mere doubt, which is not reasonable, can, without danger to the administration of justice, be the foundation of acquittal

of an accused person if there is credible testimony. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibility to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be termed as “ofcourse possible but not probable” then the case is proved beyond reasonable doubt. Nothing short of this would suffice. It is only when two reasonably probable and evenly balanced view of evidence are possible, one may necessarily concedes the existence of reasonable doubt. Any fanciful and a remote possibility is to be left out of account. If the preponderance of probabilities is all one way, a bare possibility of another view would not entitle the accused to claim the benefit of any doubt. It is essential to notice that any view of evidence in favour of an accused must be reasonable even as any doubt, the benefit of which an accused person may claim must be reasonable. Tested from this angle, it is not possible to hold that the defence projected by the appellant stood probablised. It may seem possible but very remotely. It is just as a defence case projected without much support from any evidence or material on record, which stands against the cogent and reliable evidence led by the prosecution. Apparently, it would not shake the core of the prosecution case. The plea, even if viewed minutely in the light of evidence of the prosecution, would not go to probalise the defence projected by the appellant.

The appeal accordingly would fail and is, thus, dismissed. It is apparent from the record that the appellant is on bail. He is accordingly directed to surrender before the Chief Judicial

Magistrate, Bhatinda, to undergo the remaining portion of sentence awarded to him.

October 16,2007 **(RANJIT SINGH)**

tchurmi **JUDGE**